

Message Text

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ACTION EUR-12

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SUBJECT: CRITICISM OF GUIDELINES FOR PHASE II, FOREIGN

INVESTMENT REVIEW ACT

REF: A. OTTAWA 2681 B. OTTAWA 2757

1. NEWSPAPER CRITICISM OF PROMULGATION PHASE II OF FOREIGN
INVESTMENT REVIEW ACT BY ITC MINISTER GILLESPIE ON JULY 18
HAS CENTERED ON GUIDELINES FOR EXPANSION OF EXISTING FOREIGN-
CONTROLLED FIRMS INTO RELATED INDUSTRIES. EDITORIALS COMMENTING ON
GOC ACTION HAVE CRITICIZED "LOOPOLES" ALLOWING COMPANIES WITH
LATITUDE IN SUCH EXPANSION.

2. HARSHEST CRITICISM APPEARED IN MONTREAL GAZETTE OF JULY 22
UNDER EDITORIAL "SELLING OUT CANADA". EDITORIAL MAINTAINED THAT
"CAPACIOUS LOOPOLE" GUIDELINES ALLOWED "ALMOST ANY KIND OF
EXPANSION... HENCE NOT SUBJECT TO SCREENING" AND TERMED
GUIDELINES "LIBERAL TRANSFORMATION OF THEIR SO-CALLED SCREEN
INTO AN OPEN DOOR".

3. TORONTO GLOBE AND MAIL EDITORIAL OF JULY 22 ENTITLED "BUT FIRST
THE LOOPOLE" MAINTAINED GOC WAS TRYING TO CONFUSE PUBLIC BY
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PROCLAIMING CONTROLS ON FOREIGN INVESTMENT WHILE ACTUALLY

ALLOWING FOREIGN INVESTORS TO SET UP "SKELETON COMPANIES WHICH CAN ESCAPE REVIEW" AND EASING REGULATIONS WHEREBY FOREIGN FIRMS MUST SUBMIT INVESTMENT PROPOSALS. EDITORIAL ALSO CALLS NEW PRINCIPLES OF GOOD CORPORATE BEHAVIOR (ISSUED BY ITC MINISTER AT SAME TIME AS PHASE II PROCLAMATION) "DESIRABLE BUT NOT ENFORCEABLE. AND AT TIMES AWFULLY FUZZY". EDITORIAL CONCLUDES THAT GOC ATTITUDE WAS "CONTROLS IF NECESSARY, BUT NOT NECESSARILY CONTROLS."

4. TORONTO STAR OF JULY 19 CONCENTRATED ITS CRITICISM ON FAILURE OF GOC TO HEED CANADIAN PUBLIC WHICH DEMANDS "THAT CANADIANS SHALL CONTROL THE ECONOMIC FUTURE OF THIS COUNTRY". CITING RECENT GALLUP POLL WHICH OSTENSIBLY SHOWED MAJORITY (58 PERCENT) OF CANADIAN PUBLIC THOUGHT "CANADA SHOULD BUY BACK MAJORITY CONTROL OF AMERICAN-OWNED COMPANIES HERE", STAR EDITORIAL CALLED FOR GOC "TO FOLLOW A CLEAR MESSAGE FROM CANADIANS WHO WANT TO BECOME MASTERS OF THEIR OWN HOUSE."

5. COLUMNIST JACK MCARTHUR, WRITING IN TORONTO STAR OF JULY 22, ACKNOWLEDGED THAT UNDER NEW GUIDELINES "ANY FOREIGN-OWNED FIRM IN CANADA COULD MOVE FULLY INTO ALMOST ANY BUSINESS, NO MATTER HOW REMOTE, IF IT PLANNED CAREFULLY, STEP BY STEP." HOWEVER, MCARTHUR RECOGNIZED NEED OF FOREIGN COMPANIES TO GROW AND ADJUST TO CHANGES, UNDER PHASE II REGULATIONS, IN ORDER "TO BE MORE DYNAMIC IN SEEKING MARKETS, DOING RESEARCH AND DEVELOPMENT IN THIS COUNTRY." HE URGED THAT PHASE II BE IMPLEMENTED "CAUTIOUSLY, WITH THE SCREENERS AND GOVERNMENT WORKING THEIR WAY CAREFULLY INTO A DIFFICULT AND FUZZY AREA."

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6. FIRA COMMISSIONER MURRAY AND GOC LEADERSHIP ARE SENSITIVE TO CRITICISM THAT SCREENING PROCESS MAY FAVOR U.S. COMPANIES IN CANADA OR THAT NEW REGULATIONS ON EXPANSION OF EXISTING FIRMS MAY NOT BE STRICT ENOUGH TO COMPLY WITH SPIRIT OF INVESTMENT ACT; E.G., GREATER CONTROL OF ECONOMY BY CANADIANS.

7. DURING BRIEFING OF FOREIGN COMMERCIAL AND ECONOMIC OFFICERS (REFTEL B), MURRAY STRESSED NON-DISCRIMINATORY ATTITUDE OF FIRA REGARDING NATIONALITY OF INVESTORS, AND SAID THAT LARGE PERCENTAGE LIMITED OFFICIAL USE

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OF ALLOWED TAKEOVERS INVOLVED U.S. FIRMS ONLY BECAUSE U.S. FIRMS FORMED VAST MAJORITY OF FOREIGN-CONTROLLED COMPANIES IN CANADA.

8. IN DISCUSSION WITH EMBOFF FOLLOWING BRIEFING, MURRAY CAUTIONED EMBASSY OR USG ABOUT MAKING FAVORABLE COMMENTS ON NEW GUIDELINES. HE IMPLIED THAT SUCH COMMENT WOULD ONLY BRING CRITICISM FROM THOSE CANADIANS WHO WERE ALREADY CLAIMING FIRA SHOWED BIAS TOWARD U.S. "BE DISCREET" WERE MURRAY'S FINAL WORDS.

9. COMMENT: MURRAY, WHO CAME TO FIRA FROM PRIVATE BUSINESS, APPEARS GENUINELY CONVINCED THAT HE HAS COME UP WITH PHASE II ARRANGEMENTS THAT WILL MINIMIZE PROBLEMS FOR BUSINESS COMMUNITY WHILE STILL ADHERING TO LETTER AND SPIRIT OF LAW. HE IS CONCERNED ABOUT

POTENTIAL UNMANAGEABLE ADMINISTRATIVE BURDEN OF SCREENING LARGE NUMBER OF VERY SMALL INVESTMENT PROPOSALS, AND HE IS ANXIOUS TO ESTABLISH SENSIBLE AND BALANCED APPROACH THAT WOULD NEITHER DISCOURAGE FLOW OF FOREIGN INVESTMENT NOR CREATE ADDITIONAL PRESSURE FOR MORE RESTRICTIVE REGULATIONS (PARTICULARLY ON EXPANSION PROGRAMS OF EXISTING FOREIGN-CONTROLLED FIRMS). ONLY TIME WILL TELL HOW PHASE II WILL WORK IN PRACTICE. IN ANY EVENT, WHILE PHASE II PERHAPS COULD HAVE BEEN WORSE, THERE IS CERTAINLY NO REASONS FOR USG TO MAKE "FAVORABLE COMMENTS". EMBASSY BELIEVES USG ATTITUDE SHOULD CONTINUE TO BE ONE OF CONCERNED INTEREST EMPHASIZING AS APPROPRIATE IMPORTANCE WE ATTACH TO PRINCIPLE OF NON-DISCRIMINATION AGAINST U.S. INVESTORS. WE SEE NO NEED FOR SPECIAL REPRESENTATIONS TO GOC AT THIS STAGE BUT WOULD KEEP OPTIONS OPEN IN EVENT NEW ARRANGEMENTS PROVE UNDULY BURDENSONE FOR U.S. INTERESTS.

10. EMBASSY WOULD APPRECIATE RECEIVING TEXT OF DEPARTMENT'S CONTINGENCY PRESS GUIDANCE WHICH WE PLAN TO GIVE TO MURRAY TO ALLAY HIS CONCERN, IF IT IS A REAL ONE, ABOUT AN UNDULY POSITIVE USG REACTION.

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